

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 54 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

K J DIVATIA

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Appearance:

MR BHARAT J. SHELAT instructed by  
MANISH R BHATT for Petitioner  
MR D.A. MEHTA, MR. R.K. PATEL, MR B.D. KARIA  
for MR KC PATEL for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

Date of decision: 30/01/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred the following question for the opinion of this Court:-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the amount of membership fees of the assessee paid by the employer of the assessee to the clubs was not perquisites, and liable to be included in the income of the assessee?"

The matter pertains to the assessment year 1978-79 and 1979-80. The employer of the assessee had paid Rs. 405/- and Rs. 455/- in the assessment years 1978-79 and 1979-80 respectively towards membership fees of the assessee to the club. The assessee claimed that it was not a perquisite and therefore, should not be added as his income. The Income Tax Officer rejected the claim treating the same as perquisite and adding it in the total income of the assessee. The CIT (Appeals) confirmed the order of the ITO. In the appeal before the Tribunal, it held that the employer had paid the club fees for the membership of the assessee for the benefit of business and that the assessee had joined the club for the purpose of business. It was therefore held that the assessee had not received any perquisite in form of payment of membership fees for the club.

It has been found by the Tribunal that the fees were paid by the company for the benefit of the business with a view to maintain and continue cordial business relationship. The payment of club fees was therefore for the benefit of the employer and cannot be treated as a perquisite. There is no question referred to this Court about the validity of the finding that the expense was incurred by the company by paying club fees of the assessee for the benefit of the business of the company. Therefore, the amount of membership fee of the assessee paid by the employer company to the clubs cannot be treated as a perquisite of the assessee. The said amount was therefore, not liable to be included in the income of the assessee in respect of the said assessment years. We therefore answer the question referred to us in the affirmative against the Revenue and in favour of the assessee. The reference stands disposed of accordingly with no order as to costs.

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